IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 384 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARAYANBHAI MOTIBHAI SENAMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 384 of 1993

MR GM JOSHI for Petitioner No. 1

MR MA BUKHARI, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 07/03/2003

ORAL JUDGEMENT

The petitioner in this petition has challenged

the order dated 30-9-1987 passed by the Collector, terminating the services of the petitioner. The petitioner has also prayed for the reinstatement in service with full backwages and continuity of service with consequential benefits holding that the petitioner had passed the examination in the first attempt.

2) It is the case of the petitioner that the petitioner was appointed under the centralized recruitment scheme as a Junior Clerk by order dated 5-3-1983. The petitioner was, thereafter, transferred to Mamlatdar office, Kheralu by an order dated 6-3-1984 passed by the Resident Deputy Collector and thereafter by letter dated 19-5-1984, the petitioner was informed to appear in the pre-service training class. The petitioner was, thereafter relieved on 21-5-1984 to enable him to attend the pre-service training class.

3) The petitioner has further submitted that he has attended the class and appeared for the pre-service training examination and secured the following marks:

Paper I - 61 marks
Paper II - 45 marks
Paper III - 46 marks

Since the petitioner has not cleared the examination at the first attempt, the petitioner was informed by letter dated 22-1-1985 to appear in the examination for the second attempt and thereafter, by letter dated 29-10-1985 to appear in examination for the third attempt. However, the petitioner could not avail the opportunity of appearing in the examination because of the circumstances beyond his control. The petitioner was, thereafter, issued a showcause notice dated 6-12-1986 calling upon him to show cause as to why disciplinary action should not be taken against him for his absence from the duty. The petitioner has given his reply on 17-12-1986. The respondent has pardoned the petitioner and issued a caution to remain particular in future vide order dated 5-2-1987. In the meanwhile, the petitioner was also directed by letter dated 17-6-1986 to remain present for appearing in the examination for the fourth attempt. The petitioner could not appear in the said examination because of the illness and thereafter on 21-2-1987, a showcause notice was issued calling upon him to show cause as to why his services should not be terminated, as he failed to pass the examination in four attempts. Ultimately, the order of termination was passed on 30-9-1987, which is under challenge in the

present petition.

4) It is the case of the petitioner that after the services of the petitioner were terminated, the State of Gujarat in its General Administrative Department passed a Resolution dated 13-12-1991, whereby it was decided that whenever ten marks were allotted in a paper for cleanliness and good handwriting, the passing standard should be kept to 45% instead of 50%. Because of the fact that the paper is only of 90 marks and ten marks were allotted for cleanliness and good handwriting. Becuase of bad hand-writing the person could not be made to suffer, if he was otherwise eligible to pass. On the basis of this resolution, the petitioner made a representation that in the first attempt the petitioner had secured 61 marks in paper I, 45 marks in Paper II and 46 marks in Paper III. In both the second and third paper, ten marks were separately allocated for cleanliness and good handwriting. The petitioner had secured 45% marks in both the papers, therefore, he ought to have been given the benefit of the said Resolution. The petitioner's representation was rejected, holding that the Resolution did not have a retrospective effect.

5) The petitioner was also offered one more chance to clear the examination vide letter dated 14-9-1992. However, the petitioner could not avail of the said chance, as he was awaiting the reply of his representation dated 10-8-1992. Since the petitioner could not get justice at the hands of the respondents, he filed an Appeal before the Gujarat Civil Services Tribunal on 25-6-1992, placing reliance on the Resolution issued by the State Government. However, the Tribunal has rejected the appeal of the petitioner, mainly on the ground that the appeal was filed very late, hence only on the ground of delay, the said appeal was dismissed.

6) Heard Mr.G.M.Joshi, the learned advocate appearing for the petitioner and Mr.M.A.Bukhari, learned AGP appearing for the respondent.

7) Mr.Joshi has submitted that the respondent should have considered that the petitioner had obtained 45 marks in those papers where there was specific allotment of ten marks for cleanliness and good hand-writing. Total marks for the paper, so far as the examination was concerned, were only 90 marks and therefore, even in the absence of any resolution of the State Government, the petitioner was entitled to be declared pass. The issuance of

resolution by the State Government only confirm that such injustice should not be allowed to be perpetuated. Mr.Joshi has further submitted that the petitioner could not appear in the second and third attempts because of the circumstances beyond his control. At the time of appearance in the fourth attempt, the petitioner himself was sick and applied for nonappearance in examination, along with medical certificate. Mr.Joshi has further submitted that the petitioner's representation was rejected only on the ground that the Resolution was not having retrospective effect. Mr.Joshi has submitted that by passing the said Resolution, the State Government has merely made a declaration as regards the computation of passing marks and it is well settled proposition of law that presumption of its retrospective operation is not applicable to such declaratory statute or instruction, even on this ground the petitioner be given the benefit of the said Resolution.

8) Over and above this, Mr.Joshi has submitted that there was a Resolution issued by the State Government on 20th July, 1983, wherein it was stated that in the case of Scheduled Caste or Scheduled Tribe candidates, opportunity should be given for the purpose of clearance of the examination for 4+2 times. Admittedly, in the case of the petitioner, only five chances were given and hence, the petitioner is entitled to one more chance.

9) Mr.M.A.Bukhari, learned AGP, on the other hand has supported the order passed by the authorities below. He has strongly submitted that the benefit of Resolution passed by the State Government in the year 1991 is not available to the petitioner, as the same will not have any retrospective effect. He has further submitted that even appeal filed by the petitioner before the Tribunal was dismissed, as it was filed very late. He has further submitted that four chances were given to the petitioner and none of them was availed of by the petitioner. It is, therefore, urged that the petitioner's services were rightly terminated by the respondent-authorities.

10) I have heard the learned advocate appearing for the petitioner and the learned Assistant Government Pleader appearing for the respondents and also gone through the relevant record of the petition and documents attached therewith. Having regard to the facts and circumstances of the case and having regard to the Resolutions produced before me, I am of the view that the

petitioner appeared at the first attempt in the examination held in 1985 and at that time, there was no Resolution of 1991. The said resolution should not have any retrospective application and hence, the respondent-authorities have rightly denied the benefit of the said Resolution to the petitioner. However, as far as the Resolution dated 20th July, 1983 is concerned, I am of the view that the petitioner is still entitled to have one more chance to appear in the examination, as admittedly the petitioner is a Scheduled Caste/Tribe candidate and 2+4 chances should have been given to the petitioner. Since the petitioner has been given only five chances, he is entitled to one more chance. I, therefore, direct the respondent-authorities to give one more chance to the petitioner to appear in the examination and after looking at his performance in the said examination, the petitioner's case for reinstatement can be considered by the respondent-authorities.

11) With the above observations and directions, the petition is partly allowed. Rule is made absolute to the above extent with no order as to costs.

(K.A.Puj, J.)
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